2018 IL App (3d) 170730-U

Order filed September 28, 2018.
Modified Upon Denial of Rehearing November 2, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

LEE McMURRAY, Plaintiff-Appellant, v. STEVEN R. PALUSKA, BRADFORD L. BELSLY, STEPHEN L. WEERS, WILLIAM L. WESSO, and ROBERT L. DeBOLT, Defendants-Appellees, (Steven R. Paluska, Third-Party Plaintiff; Troy I. Roberts, and Law Office of Troy I. Roberts, P.C., Third-Party Defendant).	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois, Appeal No. 3-17-0730 Circuit Nos. 12-CH-278 and 14-L-121 Honorable Stephen A. Kouri and Michael P. McCuskey, Judges, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The circuit court erred in granting summary judgment for Paluska. (2) The court did not err in dismissing the action against Paluska's agents. (3) The court properly dismissed McMurray's civil rights violation claim. (4) The court correctly struck portions of McMurray's affidavit.

¶ 2 Plaintiff, Lee McMurray, appeals from the circuit court's grant of summary judgment for defendant, Steven R. Paluska. McMurray argues the court erred when it (1) granted summary judgment for Paluska; (2) dismissed the causes of actions alleged against defendants, Bradford L. Belsly, Stephen L. Weers, William L. Wesso, and Robert L. DeBolt; (3) dismissed McMurray's civil rights claim; and (4) struck portions of McMurray's affidavit. We affirm in part, reverse in part, and remand for further proceedings.

¶ 3 FACTS

¶ 4 The cases on appeal have their genesis in landlord Paluska's eviction of tenant McMurray. McMurray began renting the property located at 1111 East Hines Avenue, Peoria Heights, from Paluska in 2007. At that time, McMurray paid $275 per month in rent. In July 2011, Paluska increased the monthly rent to $300 per month. McMurray initially refused to pay the increase and only started paying the full amount in September 2011. On November 2, 2011, Paluska sent a 30-day notice to McMurray. The notice informed McMurray that the lease would terminate at the end of the month. McMurray continued to pay rent for the months of December 2011, and January, February, and March 2012. On March 27, 2012, in case No. 12-LM-60, the court entered a forcible entry and detainer judgment for Paluska. Paluska evicted McMurray, pursuant to the judgment, on the morning of April 25, 2012. Also on April 25, 2012, McMurray filed a motion to vacate the judgment due to improper service of process. The proof of service stated that McMurray served the motion on the defendants by placing it in the mail on the day of filing. On May 21, 2012, the court found the forcible entry and detainer judgment to be void for improper service and vacated it.

¶ 5 Before the court's vacatur, on April 26, 2012, in case No. 12-CH-278, McMurray filed a one-count complaint against Paluska. McMurray alleged that, on April 25, 2012, Paluska

deprived him of the quiet enjoyment of the unit that he rented from Paluska. Specifically, Paluska removed McMurray's personal property from the rental unit pursuant to a void judgment. In the alternative, McMurray alleged that after the court entered the now-void judgment, Paluska accepted a "$300 rent and utility payment from [McMurray] in return for continuing possession of the premises."[1] McMurray contended that by accepting this payment, the parties entered a new tenancy and waived any right to enforce the judgment.

¶ 6 On April 23, 2014, in case No. 14-L-121, McMurray filed a four-count complaint against Paluska, Belsly, Weers, Wesso, and DeBolt (defendants). The complaint alleged four causes of action: (I) trespass, (II) conversion, (III) wrongful eviction, and (IV) a violation of McMurray's civil rights. The circuit court consolidated case No. 12-CF-278 with No. 14-L-121.

¶ 7 Defendants filed a motion to dismiss McMurray's complaint. 735 ILCS 5/2-619.1 (West 2014). The motion alleged that defendants evicted McMurray pursuant to a judgment that was valid on the date of the eviction. As a result, McMurray could not show the elements of trespass, conversion, or wrongful eviction. *Id.* § 2-619. Defendants further argued that McMurray's civil rights violation failed to plead sufficient facts. *Id.* § 2-615.

¶ 8 The circuit court dismissed counts I, II, and III, without prejudice, as to all defendants except Paluska. The court dismissed count IV as to all defendants, without prejudice. The court granted McMurray leave to file an amended complaint.

¶ 9 On April 14, 2015, McMurray filed his first amended complaint. The amended complaint realleged the four causes of action from the initial complaint and added counts V through VIII. Count V alleged that defendants had trespassed on McMurray's property "without malice." Count VI alleged defendants converted McMurray's personal property "without

[1]McMurray's initial complaint lists the rent payment as $300, however, the subsequent pleadings, affidavits, and evidence clarify that the amount was $360.

malice." Count VII alleged defendants wrongfully evicted McMurray "without malice." And, count VIII alleged defendants had violated McMurray's civil rights "without malice."

¶ 10 The court struck the amended complaint on defendants' combined motion and granted McMurray leave to file a second amended complaint.

¶ 11 On August 26, 2015, McMurray filed a second amended complaint. The complaint reasserted claims of trespass, conversion, wrongful eviction, a violation of McMurray's civil rights, and a violation of McMurray's civil rights without malice against Paluska. The complaint also raised claims of trespass without malice, conversion without malice, and wrongful eviction without malice against defendants.

¶ 12 Defendants filed a joint motion to strike and dismiss McMurray's second amended complaint. *Id.* The court granted defendants' motion and dismissed counts V through VIII of the second amended complaint. The court's order dismissed the claims that McMurray had alleged against Belsly, Weers, Wesso, and DeBolt and left Paluska as the sole defendant.

¶ 13 On September 9, 2016, McMurray filed a motion for partial summary judgment. The motion argued that Paluska was liable for any damages incurred while executing a void judgment and Paluska waived his right to evict McMurray by accepting an April 2012 rent payment. In a supporting affidavit, McMurray averred that before April 1, 2012, he had paid rent to Paluska, and Paluska accepted the payment. On April 25, 2012, Paluska invaded McMurray's rental unit and wrongfully took McMurray's personal property. Paluska thwarted McMurray's efforts to secure his personal property that had been placed on the curb outside the rental unit and refused to return McMurray's personal property. McMurray included with his affidavit a copy of a deposited check made to Paluska for the April 2012 rent and the court's order that found the forcible entry and detainer judgment to be void.

¶ 14 Paluska filed a competing motion for summary judgment. The motion argued that, on April 25, 2012, Paluska executed the forcible entry and detainer judgment and evicted McMurray. At that time, Paluska believed that the judgment was valid and he acted in good faith to execute it. Prior to the eviction, Paluska accepted a payment from McMurray. McMurray's payment covered unpaid rent and paid Paluska's attorney fees for the eviction proceeding. Paluska never intended for the payment to constitute a waiver of his right to evict McMurray or initiate a month-to-month tenancy.

¶ 15 On November 5, 2016, Judge Stephen A. Kouri found McMurray's claims that were based solely on the execution of the March 27, 2012, judgment order to be without merit. However, Judge Kouri denied both parties' motions for summary judgment noting that a question of fact remained as to the legal impact of the April 1, 2012, payment of $360.

¶ 16 On February 10, 2017, McMurray filed a motion for leave to file an amended count IV that alleged that Paluska acted with the aid and assistance of the Peoria County Sheriff in violation of McMurray's civil rights. McMurray also filed a copy of the Peoria County Sheriff's Office report that documented the eviction. In the narrative, the deputy stated that eviction No. "12LM60 was enforced on Lee McMurray who was not present." The deputy opened the rental unit and secured the property. Then, defendants removed McMurray's personal property and placed it near the street. When defendants finished removing the property without damaging it, the deputy left. Paluska objected to McMurray's motion for leave.

¶ 17 On March 23, 2017, Paluska filed a motion for summary judgment of McMurray's complaint on damages. Paluska argued that summary judgment was appropriate because there were no questions of material fact. 735 ILCS 5/2-1005 (West 2016). Specifically, counts I through III of the complaint were based on Paluska's execution of the forcible entry and detainer

judgment that was subsequently found void and Judge Kouri found any claim based on the void order to be meritless. Assuming *arguendo* that Paluska's acceptance of McMurray's $360 check was for the April 2012 rent, McMurray made no claim for damages for being evicted prior to April 30, 2012. Alternatively, if McMurray's $360 payment is viewed as consideration for the deferral of the eviction, McMurray breached this agreement when he indicated that he did not intend to move out at the end of April 2012.

¶ 18 On May 31, 2017, Judge Michael McCuskey denied McMurray's motion for leave to file an amended count IV, and struck Paluska's motion for summary judgment on damages. Judge McCuskey ordered the parties to file motions for summary judgment on the issue of the legal effect of the $360 payment.

¶ 19 On June 21, 2017, Paluska filed his motion for summary judgment. Paluska argued that McMurray had failed to plead a claim based on the alleged agreement and there was no genuine issue of material fact as the evidence established that the $360 payment was for fees accrued and postponement of the eviction. *Id.* Additionally, McMurray's failure to pay rent for the months of May, June, and July 2012 indicated that McMurray did not view the April agreement as creating a new month-to-month tenancy. Finally, McMurray breached and abandoned the agreement when his attorney informed Paluska that he did not intend to adhere to the oral agreement by voluntarily vacating the premises.

¶ 20 In a supporting affidavit, Paluska's attorney, Troy I. Roberts,[2] averred that McMurray's attorney, Louise Natonek, said that McMurray would pay additional money in exchange for Paluska's agreement to postpone execution of the forcible entry and detainer judgment. Paluska initially agreed to McMurray's proposal, but Natonek subsequently notified Roberts that

[2]Paluska had previously pled Roberts into the case as a third-party defendant.

McMurray would not honor the agreement. Roberts then advised Paluska to execute the judgment.

¶ 21 In another supporting affidavit, Natonek averred, consistent with Roberts, that she negotiated an agreement with Roberts where McMurray would pay additional money and voluntarily vacate the rental unit in exchange for Paluska's agreement to postpone the execution of the forcible entry and detainer judgment. McMurray revoked his assent to the agreement on April 17, 2012. As a result, Roberts told Natonek that he would advise Paluska to proceed with the eviction.

¶ 22 In a third affidavit, Paluska averred that he received a forcible entry and detainer judgment against McMurray on March 27, 2012. Before executing the judgment, he entered an agreement with McMurray to postpone the eviction on the condition that McMurray would voluntarily move out by the end of April 2012. In exchange, McMurray paid $360 to Paluska. The terms of McMurray's lease also required McMurray to pay Paluska's attorney fees and costs incurred to obtain the forcible entry and detainer judgment. As of April 2012, Paluska had incurred $272.69 in costs, and $150 in attorney fees. On April 17, 2012, Paluska received notice that McMurray no longer intended to abide by his agreement to voluntarily vacate the rental unit. On April 25, 2012, Paluska acted in good faith in reliance on the forcible entry and detainer judgment to evict McMurray. Paluska never intended for McMurray's $360 payment to constitute a waiver of his right to evict McMurray or initiate a new month-to-month tenancy.

¶ 23 In his competing motion for summary judgment, McMurray argued that Paluska's acceptance of McMurray's April 2012 rent payment waived Paluska's right to evict McMurray. Additionally, Paluska could not lawfully evict McMurray because the underlying forcible entry and detainer judgment was void. As a result, Paluska had trespassed on McMurray's rental unit.

Paluska also converted McMurray's personal property by removing it from the rental unit and wrongfully evicted McMurray. McMurray, therefore, contended that there was no genuine issue of material fact regarding Paluska's liability for trespass, conversion, and wrongful eviction.

¶ 24 In a lengthy supporting affidavit, McMurray averred that, on April 25, 2012, he was entitled to exclusive possession of the rental unit. Between December 2011 and April 1, 2012, McMurray paid each month's rent to Paluska. McMurray paid $360 to Paluska for April 2012 rent before April 1, 2012. McMurray averred that this payment was for the April 2012 rent and not overdue rent. McMurray cited to an attached exhibit, obtained from Paluska's discovery that showed the April rent statement was stamped paid. McMurray believed that his payment entitled him to live in the unit for the entire month of April. However, on April 25, 2012, Paluska and his agents entered McMurray's rental unit, removed McMurray's personal property, and refused to return the property. Paluska placed McMurray's property near the roadway, and as a result, some of the property was stolen. McMurray's affidavit also included purported admissions by Paluska, several paragraphs that stated "[o]mitted" and "intentionally deleted," and conclusory statements.

¶ 25 McMurray also included with his motion a rent statement for the month of April. The statement does not include the year, but is stamped "paid" with the notation "CK. NO 2275." McMurray included a copy of deposited check No. 2275. This check remitted $360 to Paluska Properties. The memorandum line states "April 2012 rent." The check is dated April 1, 2012. An endorsement and bank stamp on the back of the check indicate that it was deposited into an account held by Paluska Properties on April 10, 2012.

¶ 26 Paluska filed a motion to strike McMurray's affidavit because it included improper second-hand information, conclusions of law, lacked proper foundation, and contained conclusory statements.

¶ 27 On August 1, 2017, Judge McCuskey granted Paluska's motion to strike the affidavit of McMurray except for the paragraphs that were pertinent to the effect of the $360 payment. Judge McCuskey granted Paluska's motion for summary judgment and denied McMurray's competing motion for summary judgment.

¶ 28 On August 30, 2017, McMurray filed a motion to vacate Judge McCuskey's grant of summary judgment for Paluska and rehear several prior circuit court rulings. Upon review of the motion, the court held that it raised no new arguments or evidence to justify rehearing. The court denied the motion. McMurray filed a notice of appeal.

¶ 29 ANALYSIS

¶ 30 I. Summary Judgment

¶ 31 McMurray raises two arguments regarding the propriety of the circuit court's summary judgment rulings. Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is clearly entitled to judgment as a matter of law. *Id.* Summary judgment is appropriate only where "the moving party's right to judgment is clear and free from doubt." *Pielet v. Pielet*, 2012 IL 112064, ¶ 53. We review the circuit court's grant of summary judgment *de novo*. *Id.* ¶ 30.

¶ 32 McMurray first argues that the court erroneously ruled that the claims based on the now-void forcible entry and detainer judgment were without merit. We find that the court's legal finding on this issue was not in error. On April 25, 2012, Paluska executed the forcible entry and

detainer judgment that the court had entered in March 2012. At that time, the judgment was valid and Paluska relied on the judgment, in good faith, to execute the eviction. Although the judgment was subsequently vacated, it was "valid and binding until found to be erroneous." *Evergreen Savings & Loan Ass'n v. Barnard*, 65 Ill. App. 3d 492, 497 (1978). Paluska was therefore entitled to rely on the judgment until it was vacated. *Id.* at 497; see also *Field v. Anderson*, 103 Ill. 403, 404 (1882) ("[t]he reversal of a judgment cannot have a retrospective effect, and make void that which was lawful when done."). Because the judgment was valid at the time of the eviction, Paluska's actions were not wrongful or unpermitted. As a result, McMurray's causes of action for trespass, conversion, and wrongful eviction that are based on the void judgment theory are without merit. See *Howard v. Chicago Transit Authority*, 402 Ill. App. 3d 455, 461 (2010) (to assert a claim for conversion, the tenant must establish that the landlord wrongfully and without authorization assumed control, dominion, or ownership over the property); *Loftus v. Mingo*, 158 Ill. App. 3d 733, 744 (1987) (to sustain an action for trespass to real property, plaintiff must allege a wrongful interference with his actual possessory rights in the property).

¶ 33 McMurray argues in the alternative that his timely filed motion to vacate the forcible entry and detainer judgment stayed enforcement of the judgment and rendered the continuation of the eviction wrongful. Section 2-1203(b) of the Code of Civil Procedure "stays enforcement of the judgment" when a party files a timely motion to vacate the judgment. 735 ILCS 5/2-1203(b) (West 2012). Here, McMurray filed the motion to vacate the forcible entry and detainer judgment on April 25, 2012, the day that Paluska commenced the eviction. Legally, McMurray's filing stayed the enforcement of the judgment. *Id.* However, the record establishes that Paluska did not receive notice of the filing until after the eviction was complete because the

proof of service attests that McMurray mailed a copy of the motion to Paluska on April 25, 2012. There is no indication that McMurray gave Paluska prior written or personal notice of the filing of his motion to vacate. Therefore, McMurray was unaware of the stay attendant to the filing of the motion to vacate because he did not receive notice of the filing before or during the eviction.

¶ 34 McMurray also argues that the court erred in granting summary judgment for Paluska on the theory that the $360 April 2012 payment was not a rent payment. We find that the court erred in granting summary judgment on this ground. The parties' affidavits and evidence present competing interpretations of this payment. McMurray's evidence indicates that the $360 was payment of rent for the month of April 2012. In contrast, Paluska's evidence views the $360 payment as either: (1) a payment for Paluska's eviction expenses required by the terms of the lease, or (2) an offer to postpone the eviction that McMurray failed to uphold. These competing interpretations of the $360 payment present a question of fact that can only be resolved by the fact finder. Therefore, the court's grant of summary judgment on this legal theory was erroneous.

¶ 35 II. Dismissal of Claims Relevant to Codefendants

¶ 36 McMurray argues that the circuit court erred in dismissing his causes of action against Paluska's agents, Belsly, Weers, Wesso, and DeBolt. McMurray specifically asks this court to reverse the circuit court's dismissal of counts I through III of his original complaint and counts VI through VIII of the second amended complaint.

¶ 37 McMurray cannot challenge the circuit court's dismissal of his first complaint. This dismissal is not a final and appealable order as it dismissed counts I through III as to Belsly, Weers, Wesso, and DeBolt, without prejudice. *Flores v. Dugan*, 91 Ill. 2d 108, 114 (1982). McMurray had the right to refile the case, and he asserted this right when he filed an amended

complaint that alleged the additional causes of action against Belsly, Weers, Wesso, and DeBolt. *Supra* ¶ 9.

¶ 38 McMurray also challenges the court's dismissal of counts VI, VII, and VIII of his second amended complaint. Counts VI, VII, and VIII respectively alleged causes of action against defendants for "trespass without malice," "conversion without malice," and "wrongful eviction without malice." The court granted defendants' combined motion to dismiss these counts on the theory that McMurray had not alleged sufficient facts to establish these causes of action. 735 ILCS 5/2-615 (West 2014). A section 2-615 dismissal is appropriate where it is clearly apparent that no set of facts can be proved that would entitle plaintiff to recovery. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). We review the court's section 2-615 dismissal *de novo*. *Id.*

¶ 39 We find that counts VI and VII of the second amended complaint failed to state independent causes of action. Contrary to McMurray's claims, trespass and conversion do not require a showing of malice. See *Dial v. City of O'Fallon*, 81 Ill. 2d 548, 555 (1980) (a person is liable for trespass as a result of his intentional or negligent intrusion onto the plaintiff's property); *Associates Discount Corp. v. Walker*, 39 Ill. App. 2d 148, 153 (1963) (malice is not a necessary element to establish conversion). Similarly, wrongful eviction, which derives from a violation of the Forcible Entry and Detainer Act, also does not include an element of malice. 735 ILCS 5/9-101 (West 2014). Therefore, counts VI, VII, and VIII are, at best, duplicates of counts I, II, and III. Duplicate claims are not permitted in the same complaint. *Neade v. Portes*, 193 Ill. 2d 433, 445 (2000). Additionally, even if we construe counts VI, VII, and VIII as general trespass, conversion, and wrongful eviction claims against Belsly, Weers, Wesso, and DeBolt, we find that McMurray cannot allege facts sufficient to prove these claims. As we noted with regard to the first issue, the defendants acted in good faith pursuant to a facially valid order.

Supra ¶ 32. Therefore, like Paluska, the actions of Belsly, Weers, Wesso, and DeBolt were not wrongful or unpermitted. *Id.* Therefore, the court did not err in dismissing counts VI, VII, and VIII of the second amended complaint.

¶ 40 III. Dismissal of McMurray's Civil Rights Violation Claim

¶ 41 McMurray argues the circuit court erred in dismissing his civil rights violation claim and denying leave to amend count IV of the complaint. 42 U.S.C. § 1983 (2012). McMurray contends that his second amended complaint sufficiently alleged a violation of his civil rights (*id.*) where Paluska acted under the color of law with assistance from the Peoria County Sheriff to seize McMurray's property without due process of law. We review the court's dismissal of McMurray's civil rights violation claim *de novo*. *Rogers*, 234 Ill. 2d at 491.

¶ 42 To establish a section 1983 claim against a private individual, McMurray must show that: (1) defendant deprived him of a right afforded by the constitution and laws of the United States; and (2) defendant acted "under color of law." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970). A private party acts "under the color of law" when he (1) deprives the plaintiff of a federal right by exercising a right or privilege created by the State or rule of conduct imposed by the State or by a person for whom the State is responsible, and (2) acts together with or obtains significant assistance from state officials or engages in conduct reserved to the State. *Reuben H. Donnelley Corp. v. Brauer*, 275 Ill. App. 3d 300, 303 (1995).

¶ 43 McMurray's pleadings did not allege facts to establish that Paluska had acted together with or obtained significant assistance from the Peoria County Sheriff. Pursuant to a forcible entry and detainer judgment, defendants evicted McMurray from his rental unit. To effectuate the eviction, defendants removed McMurray's personal property from the unit. The sheriff was present during the eviction but did not take an active role. The sheriff was merely present to

ensure that the forcible entry and detainer was peacefully executed. As a result, McMurray cannot establish that defendants acted together with or obtained significant assistance from a state official to evict him. Further, there is no indication that defendants engaged in conduct reserved to the State as the eviction was the result of a proceeding between two private individuals.

¶ 44 The facts of the instant case stand in stark contrast to the case relied on by McMurray. In *Soldal v. Cook County*, 506 U.S. 56 (1992), the landlord evicted the plaintiff, by removing his mobile home from the rental lot, before she had obtained a forcible entry and detainer judgment. *Id.* at 58. Several Cook County Sheriff's deputies were present during the eviction. *Id.* at 59. The deputies knew that the landlord was not acting pursuant to a court order and her actions were unlawful. *Id.* When the tenant attempted to file a criminal complaint against the landlord, the deputies refused to accept the complaint and said the matter " 'was between the landlord and the tenant *** [and] they were going to go ahead and continue to move out the trailer.' " *Id.* at 58-59. Thereafter, an Illinois court ruled that the eviction was unauthorized and ordered the landlord to return the tenant's mobile home to the lot. *Id.* at 59. The tenant filed suit under section 1983 of the Civil Rights Act of 1964 (42 U.S.C. § 1983 (1988)) against the landlord and the Cook County Sheriff, alleging a violation of his rights under the fourth and fourteenth amendments of the United States Constitution. *Id.* The tenant claimed that the landlord had conspired with the sheriff to seize and remove his mobile home. *Id.* The federal district court granted the defendants' motion for summary judgment holding the tenant had failed to adduce any evidence to support a theory of conspiracy between the private and state actors. *Id.* The Supreme Court held that the landlord and sheriff had acted under the color of state law to dispossess the tenant of his mobile home by physically removing it from its foundation. *Id.* at

72. The Supreme Court concluded that the facts, therefore, established a "seizure" under the fourth amendment. *Id.*

¶ 45 The *Soldal* decision differs from the instant case in two important respects. First, the Cook County Sheriff's deputies knew that the eviction was unlawful, and when pressed by the tenant to intervene, did not act. In doing so, they condoned the landlord's unlawful eviction. In this case, a Peoria County Sheriff's deputy was present during McMurray's eviction. At the time, Paluska acted pursuant to a facially valid forcible entry and detainer judgment. The police report established that the deputy believed the eviction was lawful. Additionally, unlike the *Soldal* tenant, McMurray never sought the deputy's assistance in stopping the eviction. As a result, there is no evidence that the sheriff even tacitly condoned the eviction. Accordingly, McMurray's complaint failed to establish that defendants acted under the color of law to evict McMurray.

¶ 46 IV. Affidavit

¶ 47 McMurray argues that the circuit court erred in striking portions of his summary judgment affidavit. McMurray acknowledges that Judge McCuskey "did not strike the affidavit concerning the rent issue. He only struck the affidavit concerning other matters ***." Nevertheless, McMurray contends that the stricken portions were necessary "[t]o decide the other issues, beside the void judgment issue ***."

¶ 48 Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013) requires affidavits filed in support of or opposition to motions for summary judgment

> "[B]e made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all documents upon which

> the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto."

The Illinois supreme court rules are not aspirational, they "have the force of law," and must be obeyed and enforced as written. *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995).

¶ 49 The portions of McMurray's affidavit that Judge McCuskey struck either failed to comply with Rule 191 or were not relevant to the issue of the $360 payment. McMurray's affidavit included several secondhand and conclusory statements that are not permitted to be included in an affidavit that supports a motion for summary judgment. Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013). Additionally, McMurray's affidavit included numerous statements regarding the effect of the void order that Judge Kouri had previously found meritless. These statements were made irrelevant by Judge McCuskey's order to file motions for summary judgment on the sole issue of the $360 payment. Therefore, the court properly struck the statements that did not comport with Rule 191(a) and were not relevant to the summary judgment issue.

¶ 50 CONCLUSION

¶ 51 The judgment of the circuit court of Peoria County is affirmed in part, reversed in part and remanded for further proceedings.

¶ 52 Affirmed in part and reversed in part.

¶ 53 Cause remanded for further proceedings.